

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MATTHEW J. HAYHOW,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**CASE NO. 2:16-CV-539
CRIM. NO. 2:90-CR-208(2)
JUDGE GEORGE C. SMITH
MAGISTRATE JUDGE JOLSON**

OPINION AND ORDER

On August 15, 2016, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings recommending that this action be dismissed. (ECF No. 7). Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (ECF No. 8).

Petitioner again argues that his convictions on two counts of carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c) are invalid in view of *Johnson v. United States*, -- U.S. --, 135 S.Ct. 2551 (2015) (declaring the "residual clause" of 18 U.S.C. § 924(e)(2)(B)(ii) of the Armed Career Criminal Act ("ACCA") to be unconstitutionally vague), and because the predicate crime for such offenses, *i.e.*, armed bank robbery, does not constitute a "crime of violence." However, the United States Court of Appeals for the Sixth Circuit has rejected Petitioner's argument regarding application of *Johnson* to § 924(c). *United States v. Taylor*, 814 F.3d 340, 375 (6th Cir. 2016). This Court is bound by that decision. The Sixth Circuit has likewise rejected Petitioner's claim that an armed robbery does not constitute a "crime of violence" within the meaning of § 924(c)(3)(A) because it may be committed without the use of force. *See United States v. McBride*, No. 15-3759, -- F.3d --, 2016 WL 3209496, at *2

(6th Cir. June 10, 2016). Moreover, such claim does not raise an issue under *Johnson* and therefore is barred by the one-year statute of limitations set forth in 28 U.S.C. § 2255(f).

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the foregoing reasons, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's *Objection* (ECF No. 8) is **OVERRULED**. The *Report and Recommendation* (ECF No. 7) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT